

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

LOUIS SPIES 14-R-1148  
Plaintiff,  
-against-

CIVIL RIGHTS COMPLAINT  
42 U.S.C.A. 1983

15 CV 0669 RJA

THE STATE OF NEW YORK DEPARTMENT OF CORRECTIONS  
& COMMUNITY SUPERVISION:  
D. DRZYMALA Correction Officer  
LEUNDOWSKY Correction Officer

Defendants,

STATEMENT OF JURISDICTION.

This Civil Rights Action seeks relief and/or damages to defend and protect the Rights Guaranteed by the United States Constitution of the United States This Action is brought Pursuant to 42 U.S.C.A. 1331 / 42 U.S.C.A. 1997e,

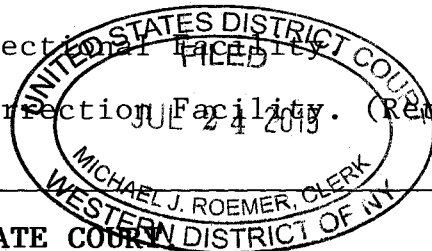
PARTIES TO THIS ACTION.

PLANTIFF:

LOUIS SPIES 14-R-1148, Gowanda Correctional Facility P.O. Box 311,  
Gowanda N.Y. 14070-0311

DEFENDANTS:

D. DRZYMALA Correction Officer Gowanda Correctional Facility  
LEUNDOWSKY Correction Officer Gowanda Correctional Facility. (Retired 5/2015)  
P.O. Box 350, Gowanda N.Y. 14070 0350



PREVIOUS LAW SUITS IN STATE COURT

Notice of Intention filed with the Attorney General Albany N.Y.  
April 13th 2015, Certified Return Receipt Requested.

Supereme Court Albany N.Y. C.P.L.R. Article 78 Hearing 8/21/2015.

Grievance No. GWD 12270-15 Denied 5/19/15.

Grievance No. GWD 12367-15 Denied 7/10/15.

There is no other State or Federal Action Pending.

**STATEMENT OF THE CLAIM.**

**A. FIRST CLAIM:**

On January 5th 2015 I was given a fabricated misbehavior report due to not signing a learning experience in the ASAT DWI Program B-N-2, Housing Unit I was handcuffed and in the SHU Special Housing Unit within (10) ten Minutes for allegedly sleeping in Group on January 2nd 2015. all because I would not sign. Substantial evidence does not support the determination on any of plaintiffs misbehavior reports, I was given three charges interference, Direct Order and disturbance, pending in CPLR Article 78 Albany County being heard August 21st 2015. see Lopez v, Fischer 100 A.D.3d 1069, 2012 Slip Op 7243, Plaintiff was denied (47) Witnesses that were in Group on January 2nd and 5th 2015.

The NYS DOCCS A.S.A.T. DWI Program has its own procedures for such petty and minor incidents such as a work detail, writting assignment etc. You would have to go to a TPRC Treatment Plan Review Committee to be removed see inclosed Exhabits, Time in SHU was (7) seven days illeglly.

**Due Process fifth & Fourteenth Amendments;** NYS DOCCS 7 NYCRR 254.5(a); Wolff v, McDonnell 418 U.S. 539, Brooks v, Scully 504 NYS 2d 387, a Contit-  
utional right to call witnesses and employee assistance.

Grivance No GWD 12270-15 denied 5/19/15 C.O.R.C. Albany N.Y. N.Y. A.S.A.T. .  
Policy and procedure for removal plaintiff has completed the program 2/15/15.

**Relief Sought:** Expungment of the record and surcharges returned.

Ongoing investigation into the Corruption at the Gowanda Correctional Facility there has been another inmate death as of 1/18/18 in the SHU, this has been a long ongoing problen here at Gowanda Correctional Facility and the Correctional Officers keep getting away with it Albany does nothing to Stop the Corruption. Ive written the NYS Police twice and still no answer.

## STATEMENT OF THE CLAIM.

**B. SECOND CLAIM:**

On March 21st 2015, plaintiff was sexually assaulted, by Drzymala in the A-N-3 bathroom at 9:00 Am and Leundowsky blocked the door-was and did nothing to stop the officer. see (Sexual Abuse Prevention & Education Office) NYS DOCCS 1220 Washington Ave Albany 12226-2050 Directive 4028A, Drzymala a NYS DOCCS employee stated if you move off the wall Im going to bash your head in, got it, and proceeded to punch plaintiff in the ribs and tried to bash my head into the brick wall than stroked my penis and squeezed my testicals very hard causing extreme pain and suffering to this day and medical cannot do anything or will not do anything I already take pain medication and that helps a little.

**Eighth Amendment Violations Cruel and Unusual Punishment: see-** Rodriguez v, McClenning 399 F.Supp 2d 228, U.S.D.C. S.D.N.Y. 2005, here is almost the same case at Bar,! Although I was found with a lighter in my possession and given a misbehavior report for smoking and possession of an authorized item in an unauthorized area. I did plead guilty to having the lighter because I need the report of what happen for this complaint. Leundowsky stood by blocking the door-was and did nothing to stop Drzymala-  
**Failure to protect; Eighth Amendment Violation Cruel and Unusual Punishment;** Drzymala and Leundowsky exhibited a sufficient culpable state of mind, see McClenning (Supra), there is correctional officers who have said he has done this before C.O. heaily Gowanda Correctional Facility. there is other inmates who have been assaulted and sexually assaulted Steven Bombard is one who came forward and also filed a grievance and complaints.  
 Grievance GWD 12367-15 Denied 7/10/15.

Relief Requested 100.000,00 One Hundred Thousand Dollars each Defendant, an investigation into the Gowanda Correctional Facility abuse on inmates.

1. On January 5th 2015, in the NYS DOCCS A.S.A.T / DWI Program, the New York State Department of Corrections and Community Supervision Alcohol & Substance Abuse Driving While intoxicated program Housing Unit B-N-2,.- I was given a Learning Experience form that allegedly stated I was Sleeping on January 2, 2015 a Friday. I was apparently given a Direct order to Sign and read and I said I cannot sign this its Fabricated. Ms. Bauer says come with me she took me to the Correction Officers office and there was three Correction Officers waiting and a Sargeant down the hall by the Elevator with the door open waiting also. I was thereafter given three Misbehavior reports where I was found Guilty on 1/10/15 and in the SHU/ Special housing Unit from 1/5/15 to 1/12/15 I did plead guilty to one charge because I needed it for this Civil rights action. Ms. Bauer as Left. **GWD 12270-15** Grievance filed and denied on May 19 2015. see inclosed.
2. On July 21 2015, I was sexually assaulted in the A-N-3 Housing Unit Bathroom by Correctional Officer D.Drzymala apparently he smelled smoke Drzymala pat-frisked me tried to bash my head into a brick wall, punched me in the ribs three times stroked my penis and squeezed my testicals to the point of extreme pain and suffering for months thereafter and to this day plaintiff still is having pain every day. **GWD 12367-15 Denied July 10 2015. Directive 4028A NYS DOCCS. 42 USCA 15601 15609 (11) et al. See Rodriguez v, McClenning 399 F.Supp 2d 228 2005) U.S.D.C. S.D.N.Y.**
3. Correction Law 24, does not bar suit in Federal Court from NYS DOCCS employees or Correction Officers however section does provide immunity in State Court of Claims. **Parris v, NYS DOCCS 947 F.Supp 2d 354.**

-3- complaint.

4. plaintiff has written several complaints and two grievances, with no answer to date from any investigation that was allegedly ongoing, nor, have I heard from Steven Maher OSI Office of Investigations Albany- The NYS Police was written with no answer the Attorney Generals office, PLS prisoners Legal Services did state they could not be of assistance, and Ms. Garcia Acting Deputy Superintendent of Programs did write other than that nothing. see GWD 12207-15 Inclosed. Denied May 19/15.

5. Since January 5th 2015 plaintiff has incurred (12) Misbehavior reports which are all in a C.P.L.R. Article 78 proceeding being heard August 21 2015 in Supreme Court Albany County. INDEX No 2698-15 Hon: \_\_\_\_\_ and yet, this officer is still sexually assaulting inmates on A-N-3.?

6. The Misbehavior reports were also brought up in plaintiffs Merit Board Appearance on March 29th 2015, there involves a serious alcoholism problem also theres six prior Convictions one Attempted Burglary and four Parole Violations stemming over thirty years of Criminal history I have remorse and I am ashamed of the criminal History and Alcoholism is no Excuse.

7. Plaintiff was denied fortyseven Witnesses that were in Group on January 1st, and the 5th 2015, the officer said thats too many. and the A.S.A.T. DWI program has there own internal procedures and directives for unsatisfactory behavior and could be from work details to removal although you would go infront of a committee to be removed TPRC, yet C.O.R.C. Upholds the Counselors decision to write a misbehavior report, basicly because the Groups are not going the way she would like it. and she was new to the group although she was new to the Group inmates heard about her from others.

8. The Eighth Amendment rule that cruel and unusual punishment shall not be inflicted applicable to the states through the Fourteenth Amendment is violated by unnecessary and wanton infliction of pain and suffering. The core Judicial inquiry on the Eighth Amendment Claim for cruel and unusual punishment is whether force was applied in good-faith effort to maintain discipline or maliciously and sadistically to cause harm; where no legitimate law enforcement or penological purpose can be inferred from defendants alleged conduct, the abuse itself may be sufficient evidence of culpable state of mind see *Hogan v. Fischer* 738 F.3d 509, Inmates have a right to be free from unnecessary and wanton infliction of pain at the hands of prison officials. contemporary standards of decency always are violated whether or not significant injury is evident. (Supra)

9. The First and Fourteenth Amendments protect prison inmates who file Grievances from retaliation by prison officials and such retaliation is actionable under section 1983 U.S.C.A. Cont. Amend. 1st & 14th,, Plaintiff has had no misbehavior reports in the last (15) fifteen years in NYS DOCS) the misbehavior reports are all fabricated except two I plead guilty too and only because I need them for the Court of Claims and the Article 78.

10. Defendant Luendowsky Correctional Officer NYS DOCCS Gowanda Correctional Facility who has retired since May 2015, was blocking the door way and did nothing to stop Drzymala, both work on A-N-3, housing unit 7:00 to 3:00AM there was several inmates who heard the Assault and Harold Moore saw some of it because he was talking with his wife on the phone right by the door way at 9:00 Am on March 21st 2015. the other inmate was Watkins on A-N-3 this was a violation of plaintiffs Constitutional Rights Eighth 18 USC 2243-2241, NYS DOCCS has a duty to protect inmates, *Farmer v. Brennan* 114 S.Ct. 1970-77 Failure to Protect. GWD 12367-15 CORC Denied July 10, 2015.

-5- complaint.

11. **42 USCA 15606 12-19-14** National Prison Rape Commission was well implemented within the New York State Department of Corrections and has a Special Office in Albany and a training center also. **section 15609 Definitions-**

**(11) Sexual Fondling** the term Sexual Fondling means the touching of the private parts of another person (including the genitalia, anus, groin, breast, inner thigh or buttocks,) for the purpose of sexual gratification.

12. Jeff Beck was written and has not answered to date there may be evidence of prior assaults on prisoners at other jails or NYS DOCCS Prisons where plaintiff did write the Civil Service Commission although they state there was nothing under Drzymala or Leundowsky Correctional Officers.

13. The Eighth Amendment applies to the state through the due process clause of the Fourteenth Amendment, does not require a showing that a prison official acted or failed to act believing that harm actually befall an inmate it is enough that the official acted or failed to act despite his knowledge of substantial risk of serious harm see *Blyden v, Mancusi* **186 F.3d 252 U.S. Ct. of Appeals Aug 3, 1999, R&R**, Contemporary standards of decency.

14. Defendants Drzymala has assaulted inmates before and correction Officers have stated "he has done that before" and apparently continues to assault inmates. C.O. Heaily has stated that to Mr. Bombard a witnesses.

15. In *hudson v, Mcmillian* **503 U.S. 1, 112 S.Ct. 995**, Excessive Force may constitute an 8th Amendment injury even if prisoner is not seriously physically harmed. The core judicial inquiry is... whether force was applied in good-faith effort to maintain or restore discipline, or Maliciously and sadictically to cause harm. Leundowsky knew and did nothing to stop Drzymala

16. Plaintiff originally thought that Drzymala was trying to go out on compensation for the summer, although he told me "if", I move off the wall while pat-frisking me, he said he would bash my head in, he continued to punch me in the ribs, tried to bash my head into the brick wall and stroked my penis and squeezed my testicals very hard causing extreme pain even till this day I have severe pain. Medical cannot do anything allegedly.

17. Qualified Immunity protects officials from Civil Liability under section 1983, for actions performed in the course of their duties "if" their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. NYS DOCCS has a training course for sexual abuse and prevention in Albany.

18. All Plaintiffs Grievances, Misbehavior reports have been Exhausted with NYS DOCCS and CORC Albany and everthing has either been Affirmed or denied, the only alternative was an Article 78 C.P.L.R.

**Wherefore.** Plaintiff respectfully ask this Court to Reverse or Order - Expungement of the Disciplinary/Misbehavior reports, and restore Plaintiff to his original status from Juanuary 2nd 2015 including Administrative Law Library Clerk with back pay filling fees and surcharges in the amount of about 50.00 fifty Dollars any and all such fnrther relief this Court may deem Just and Proper in the interest of Justice.


#### VERFICATION.

I LOUIS SPIES under the penalty of Perjury hereby states the foregøing is true and correct and matters stated upon information and belief I believe them to be true.

cc: Attorney General Albany N.Y.  
Executed On July 22 2015.

*Louis Spies*  
LOUIS SPIES 14-R-1148.  
*Gonzalo Buectine Falty*  
PO BOX 311  
*Gonzalo NY 14070-0311*



 <b>Corrections and Community Supervision</b>  ANDREW M. CUOMO Governor      ANTHONY J. ANNUCCI Acting Commissioner	Grievance Number <b>GWD-12367-15</b>	Desig /Code <b>D/49</b>	Date Filed <b>3/31/15</b>
	Associated Cases		Hearing Date <b>5/27/15</b>
	Facility <b>Gowanda Correctional Facility</b>		
<b>INMATE GRIEVANCE PROGRAM</b> <b>CENTRAL OFFICE REVIEW COMMITTEE</b>	Title of Grievance <b>PREA/Sexually Assaulted</b>		

### **GRIEVANT'S REQUEST UNANIMOUSLY DENIED AS WITHOUT MERIT**

Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby denied as without merit. CORC upholds the determination of the Superintendent for the reasons stated.

CORC notes that the grievant was issued a MBR on 3/21/15 for smoking in the bathroom, and that he was properly pat frisked. CO D... denies sexually assaulting him and CO L... denies witnessing same. His allegations were reported in accordance with department policy and determined to be unsubstantiated. In addition, it is noted that he did not complain until 3/26/15 when he was interviewed by Sgt. J... He was subsequently seen by medical staff with no visible injuries noted, and CORC has not been presented with sufficient evidence of malfeasance by staff.

CORC notes that his disciplinary disposition was affirmed by Captain P... on 4/7/15.

With respect to the grievant's appeal, CORC asserts that Directive #4028A was followed and finds no compelling reason to revise policy.

MPS/


-----

-----

Gowanda Correctional Facility

JUL 10 2015

Inmate Grievance

 <b>NEW YORK STATE</b> <b>Corrections and Community Supervision</b>  ANDREW M. CUOMO Governor	Grievance Number <b>GWD-12270-15</b>	Desig./Code <b>I/20</b>	Date Filed <b>1/20/15</b>
	Associated Cases		Hearing Date <b>4/29/15</b>
	Facility <b>Gowanda Correctional Facility</b>		
<b>INMATE GRIEVANCE PROGRAM</b> <b>CENTRAL OFFICE REVIEW COMMITTEE</b>	Title of Grievance <b>ASAT Policy And Procedures For Removal</b>		

### **GRIEVANT'S REQUEST UNANIMOUSLY ACCEPTED IN PART**

Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby accepted only to the extent that CORC upholds the determination of the Superintendent for the reasons stated.

CORC notes that the grievant refused to sign the Learning Experience form on 1/5/15, and ASAT PA B... denies fabricating any information on the form or threatening him. In addition, the grievant was issued a MBR for creating a disturbance, interference and direct order on 1/5/15 and was housed in SHU between 1/5/15 and 1/12/15. He was also removed from the DWI program and his Law Library assignment. It is noted that he has since completed the DWI program, effective 2/15/15.

CORC notes that a disciplinary hearing affords the opportunity to remedy any factual or procedural errors in a disciplinary report and that it was affirmed by Capt. P... on 1/13/15.

With respect to the grievant's appeal, CORC upholds the discretion of staff to issue a MBR and the authority of the Program Committee to make or change assignments based upon the needs, skills and custodial history of the inmate, the needs and concerns of the correctional facility and the skill level or difficulty of each particular job.

SLE/rjq/amb

-----

-----

Gowanda Correctional Facility

MAY 19 2015

Inmate Grievance

## Policy

Sexual abuse is unwanted sexual contact with another inmate or any sexual contact with a staff member. Sexual harassment includes repeated sexual comments or gestures.

The Department does not tolerate sexual abuse or sexual harassment. All complaints of sexual abuse, sexual harassment or retaliation because of such a complaint will be investigated. Anyone who sexually abuses or harasses someone will be disciplined and/or prosecuted.

## Definitions

Inmate-on-inmate sexual abuse is when one or more inmates have sexual contact with another inmate when he or she doesn't want it, or by using coercion, threats or force.

Staff-on-inmate sexual abuse is when an employee, volunteer, intern or outside contractor has any type of sexual contact with an inmate. Staff asking for sex or making sexual threats are also types of sexual abuse.

See DOCCS Directives #4027A and #4028A.

## About Your Safety

You have the right to be safe from sexual abuse and harassment. No one has the right to make you do a sexual act. You do not have to put up with sexual harassment, sexual abuse or being forced to have unwanted sexual contact with anyone. If you are being pushed, threatened or blackmailed into a sex act by another inmate or by staff, you should report it. You should also report if anyone tries to get back at you because you reported such an incident or spoke to an investigator about sexual abuse.

**What to do if you are abused:** If you are sexually abused, report it immediately to staff. Staff will protect you from the abuser and take you to Medical. Help will be provided whether or not you name your abuser, but be as clear as you can when you report the abuse. The more you tell staff, the easier it will be to help you.

Even though you may want to clean up after the abuse, it is important to go to Medical **BEFORE** you shower, wash, drink, eat, change clothing or use the bathroom. Medical staff will check you for injuries that you may or may not be able to see right away. They can also check you for sexually transmitted diseases, and help you decide if you need to go to the hospital where they can collect evidence of the sexual abuse. Medical staff will also discuss the possibility of pregnancy with a female victim. You will receive contact information for rape crisis services.

The person or persons responsible for sexual abuse of inmates can only be disciplined or prosecuted if the abuse is reported.

## Reporting

### How do you report

#### sexual abuse if it happens?



It is important to tell staff that you have been sexually abused or harassed. ***You can tell any Supervising Offender Rehabilitation Coordinator (S.O.R.C.), Offender Rehabilitation Coordinator (O.R.C.), Chaplain, security staff person, medical staff, or any other employee.*** All staff must report the abuse, and they can only talk about the abuse with officials who ***must*** know about it to do an investigation or provide you with care. You may also talk to Mental Health staff.

If you report the abuse in writing first, you may write to the Superintendent, a member of the facility Executive Team, a S.O.R.C., your O.R.C., a chaplain, a security supervisor, Central Office, the PREA Coordinator or the Department's Office of the Inspector General (IG). You can report the abuse at any time, but the sooner you report it, the sooner it can be investigated and steps can be taken to protect you.

If you feel that you have been a victim of sexual abuse or harassment, you should report it right away. You can also file an inmate grievance or have someone report the abuse for you.

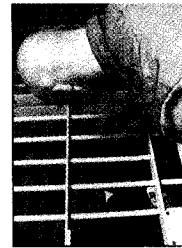
**What happens with reports of sexual abuse?** All reports of sexual abuse, harassment, retaliation for reporting sexual abuse or harassment, or retaliation for taking part in an investigation of possible sexual abuse or harassment will be investigated. Cases may also be reported to law enforcement officials by the Department's Office of the Inspector General (IG).

**Retaliation is not allowed.** An inmate will not be punished for good faith reporting of sexual abuse or sexual harassment. However, law enforcement officials or the IG may charge a person with making a false written statement or falsely reporting an incident if, after investigation, it is proven that the person made the statement knowing it was false or baseless, or the person reported an alleged crime or incident knowing it did not in fact occur (e.g., Penal Law §§ 210.45, 240.50). A report made in good faith does not constitute falsely reporting an incident or lying even if the investigation does not substantiate the allegation.

## Reducing Your Risk

Unwanted sex with another inmate or any sex with a staff member is sexual abuse. Here are some things you can do to reduce your risk of sexual abuse:

1. Choose your friends carefully.
2. Stay Alert! Do not use drugs or alcohol; they can make it hard to make good decisions and to be aware of what is happening around you.
3. Do not believe another inmate who says he or she will protect you or take care of you in exchange for sexual favors.



4. Do not take gifts or favors from others. Sexual abuse is one way people are sometimes forced to pay off a debt.

5. Do your best to seem confident even when you feel anxious or afraid.

6. Pay attention to uncomfortable feelings about others. If you think something is dangerous, it probably is. If you think you are not safe, tell staff.

7. Do not flirt or talk to other inmates or staff about having sex. If someone asks you to do something sexual, you have the right to say "no."

8. Tell a staff member if you are being harassed or threatened for sex.

9. Stay where you should in the facility – it is not safe to be out of place.

10. Follow the Inmate Rule Book.

## Confidentiality

The identity of a victim of sexual abuse, the person reporting sexual abuse, any witnesses and the facts of the report itself are confidential. Information is only shared with the people involved in the reporting, investigation, discipline and treatment process, or as otherwise required by law. All records of allegations of sexual abuse are confidential under Civil Rights Law § 50-b.

## Report Sexual Abuse

**Office of the Inspector General  
Department of Corrections and  
Community Supervision  
State Office Campus, Building 2  
1220 Washington Avenue  
Albany, New York 12226-2050**

**Sexual Abuse Prevention  
& Education Office  
Department of Corrections and  
Community Supervision  
State Office Campus, Building 2  
1220 Washington Avenue  
Albany, New York 12226-2050**



**Andrew M. Cuomo  
Governor**

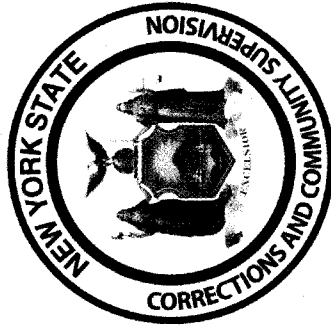
**Anthony J. Annucci  
Acting Commissioner**

2013

Form DC055C (rev 6/13)

# The Prevention of Sexual Abuse in Prison

## What Inmates Need to Know



**THE NEW YORK STATE  
DEPARTMENT OF CORRECTIONS  
AND COMMUNITY SUPERVISION HAS**

**ZERO TOLERANCE  
FOR SEXUAL ABUSE  
AND SEXUAL HARASSMENT**

## Report Sexual Abuse

**GOWANDA CORRECTIONAL FACILITY**

P.O. BOX 311

Gowanda, N.Y. 14070-0311

GOWANDA

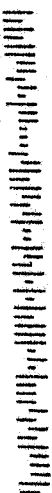
NAME: LOUIS SPIES

DIN: 14-R-1148.

Hon: Michael J. Roemer.

C/O; U.S. District Court Western District of New York.  
2, Niagara Sq,  
Buffalo, N.Y. 14202

Legal Mail.



Louis Spies 14-R-1148,  
Gowanda Correctional Facility  
P.O. Box 311,  
Gowanda N.Y. 14070-0311

DATED July 22 2015.

Hon; Michael J. Roemer, Clerk  
C/O: U.S. District Court Western District of N.Y.  
2, Niagara Sq,  
Buffalo, N.Y. 14202.

Dear Clerk of the Court,

I am inclosing a 42 U.S.C.A. 1983 Complaint Form for a Civil Rights Violations of the Eighth Fourteenth, and/or Fifth Amendments all the arguments are in the Complaint to the best of my knowledge and upon information and belief Statement made upon information and belief I also would believe them to be true Executed on July 22 2015.

There has been another inmate killing here at Gowanda Correctional Facility as of July 18th 2015 and there is many more in the past and most likely to come now that ClitionCorrectional Facility is transferring 180 Correctional Officers out, there is a chance some will be comming here.

I was sexually assaulted and have wrote the N.Y.S. police with on answer to date and the Attorney Generals Office with No answer to date, Steven Maher OSI Albany no answer to date Jack Beck N.Y.C.L.U. no answer to date and Ive given up hope where or what are these people doing I know NYS DOCCS is trying to Cover up everthing thats for sure.

Pleas submit my complaint for a review and filling, My Article 78 will be heard August 21st 2015 and it will be a while before this will even get started and could take two years or more with the covering up.

*Louis Spies*  
*14 R 1148*  
*Gowanda Correctional Facility*  
*PO BOX 311*  
*Gowanda NY 14070-0311*